IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 19644 of 2007(S)

AGAINST THE ORDER IN IA 1857/2007 IN OP.494/2004 of FAMILY COURT,THRISSUR
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PETITIONER:

MINI, D/O. THALIATH POULOSE,
MUPPATHADAM DESOM, KARUMALUR VILLAGE,
ALUVA TALUK, ERNAKULAM DISTRICT.

BY ADV. SRI.N.P.SAMUEL

RESPONDENTS:

ANTO, S/O. KOLLANNUR GEORGE,
PONGANAMKADU DESOM, KUKRICHKKARA VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.SHOBY K.FRANCIS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Petitioner's Exhibits

Ext.P1: True copy of order in M.C. 55/2005 of the Family Court,Thrissur dated 17.4.2007

Ext.P2: True copy of Order in I.A. 1631/2007 in O.P 494/04 of the Family Court, Thrissur dated 8.6.2007.

Ext.P3: Photocopy of Affidavit & Petition -I.A 1857/2007 in O.P 494/2004 filed by respondent before the Family Court, Thrissur dated 16.5.2007.

Ext.P4: Photocopy of objection filed by petitioner in I.A. 1857/2007 in O.P 494/04 of the Family Court, Thrissur dated 24.5.2007

Ext.P5: True copy of order in I.A. 1857/2007 in O.P 494/04 dated 8.6.2007 issued by Family Court, Thrissur.

Respondent's Exhibits

Ext.R1(a) True copy of O.P No. 494/04 filed before Family Court, Thrissur on 19.5.2004.

Ext.R1(b): True copy of order in I.A No. 6898/2007 in W.P (c) No. 8969/07 dated 22.6.2007.

//True copy//

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KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

W.P.(C) No.19644 of 2007

Dated this the 16th day of October 2007

JUDGMENT

Harun-Ul-Rashid ,J.

The petitioner herein is the 1st respondent in Original Petition No.494/2004 pending before the Family Court Thrissur and the respondent is the petitioner in that O.P. The said O.P was filed for a decree of divorce under Section 10 (1) (iii) of the Divorce Act 1869 on the ground that the petitioner has been of incurably unsound mind for a continuous period of not less than two years immediately preceding the presentation of the petition. The allegation in the Original petition for divorce is that right from the beginning the petitioner is continuously suffering from unsound mind The application also narrates some incidents . According to the respondent such incidents evidently shows that the petitioner has been incurably of unsound mind . The respondent has filed I.A. 1631/2007 before the family court for appointing a 3rd person as guardian of the 1st respondent on the allegation that she is a mentally disordered woman and the Family court by order dated 8-6-2007 after conducting a preliminary enquiry dismissed the application finding that the wife is capable of protecting her interest for the time being.

2. Ext.P3 is the I.A. 1857/2007 filed by the respondent requesting the Family court to amend the prayer portion of the Original Petition. The request of the respondent is that in case, the court found that the respondent is unable to prove the ground under 10 (1) (iii), the

allegation proved shall be taken as proof of cruelty under Section 10 (1) (x) of the Divorce Act.

3. We have heard both sides in detail. We are of the view that the relief portion alone is not sufficient for entertaining the ground under Section 10 (1) (x) of the Act. In the original petition itself the title reads that the petition is under Section 10 (1) (iii) of the Divorce Act and hence suitable amendment are necessary in the title as well. The Family court may not be justified in enquiring the ground under 10 1 (x) of the Act in the absence of proper pleadings. Therefore the present application for amendment to insert a separate relief is by itself not sufficient and will not serve the purpose for which the amendment was sought for. Therefore we permit the petitioner in O.P 494/2004 to file a fresh petition for amendment incorporating the necessary pleadings seeking ground of divorce under Section 10 (1) (x) of the Act.

4. In the circumstances the counsel for the respondent is allowed to withdraw I.A. No. 1857/2007, for filing a fresh application for inserting the ground of cruelty under Section 10 1 (x) of the Act. The impugned order under Challenge (Ext.P5) is set aside. Since the time fixed by this Court is expired we extend the time limit for a further period of 4 months.

Writ petition is disposed of as above.

KURIAN JOSEPH, JUDGE

HARUN-UL-RASHID, JUDGE

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